

REMARKS/ARGUMENTS

Reconsideration of this application is respectfully requested in view of the foregoing amendments and discussion presented herein.

1. Rejection of Claims 1-6, 8-9, 13-14, 16, 18-21, and 27-35 under 35 U.S.C. § 103(e).

Claims 1-6, 8-9, 13-14, 16, 18-21, and 27-35 were rejected under 35 U.S.C. § 102(e) as being anticipated by Patel et al. (U.S. Patent No. 6,731,600).

After carefully considering the grounds for rejection the Applicant responds as follows.

(a) Claims 1, 14, and 27. Independent Claims 1, 14, and 27 are directed to controlling network congestion.

In support of the rejection the Patel reference is cited as teaching all aspects of the claims.

Applicant has amended these independent claims to include the material of dependent Claim 9, which recites the modulation of the MSS for indicating back-to-back packets.

In the rejection of Claim 9, as well as of related Claims 18, 33, and 34, it is asserted that Patel disclosure includes "*wherein said maximum segment size (MSS) is modulated for explicitly indicating that said packets are being sent back-to-back*", with column 9, lines 60-64, cited in support thereof. This section of the Patel reference reads as follows:

FIG. 4 is a flowchart illustrating a method for estimating the available bandwidth between the server computer 110 (FIG. 1) and the client computer 112 (FIG. 1) via the network 100. In one embodiment of the invention, each of the states shown in FIG. 4, other than those relating to transmitting data packets, is performed by the transmission bandwidth detector 206 (FIG. 2).

Nothing is discussed in this section of Patel about modulating the MSS for explicitly marking packets as being sent back-to-back. In FIG. 4 of Patel, the time is

recorded between the receipt of the first and second packet and it is determined if the number of back-to-back packets exceeds a threshold. This flowchart demonstrates that the size of the second block is recorded and that this is used to determine how many packets are included in the report (column 10, line 58 through column 11, line 8). However, nothing is taught in regard to changing segment size for explicitly marking a packet as being sent back-to-back.

Anticipation requires that every claim element be taught or inherent in a single prior art reference, Manual of Patent Examining Procedure (MPEP) §706.02a. It is clear that the above claims are not anticipated by the relied-upon references. Therefore, Applicant respectfully requests that the rejection of Claims 1, 14, and 27, and the claims which depend therefrom, be withdrawn and the instant application allowed to issue.

(b). Claims 2-6, 13, 16, 19-21, 28-31, and 33-35. This group of claims depends from independent claims whose patentability has been shown and should be considered *a fortiori* allowable. Therefore, Applicant respectfully requests that the rejection of Claims 2-6, 8-9, 13, 16, 19-21 and 28-31, and 33-35 be withdrawn.

2. Rejection of Claims 7, 10-12, 15, 17, 22-24, 26, and 36-39 under 35 U.S.C. § 103(a).

Claims 7, 10-12, 15, 17, 22-24, 26, and 36-39 were rejected under 35 U.S.C. § 103(a) as unpatentable over Patel et al. (U.S. Patent No. 6,731,600) in view of Zhang (U.S. Publ. No. 2005/0144303).

(a) Claim 26. Independent Claim 26 is directed to a system for controlling network congestion.

In support of the rejection, the Examiner admits that Patel does not "*explicitly state controlling the length of packet trains transmitted by the sender in response to altering the rate at which receipt acknowledgements (ACKS) are communicated from the receiver to said sender as based on estimated network bandwidth (0009, lines 3-9).*" The Zhang reference is then asserted in combination with the Patel reference.

Applicant has amended Claim 26 in a similar manner to the amendment of independent Claim 1 (incorporating material from Claim 9) to recite modulating the MSS value for explicitly indicating that the packets are being sent back-to-back. As noted with regard to Claims 1, 14, and 27, Patel provides no teachings for marking packets as back-to-back by altering MSS. The recited portion of the Patel reference (column 9, lines 61-64), which is asserted to teach modulating of MSS values as an explicit back-to-back indicator, teaches only that packet size can be used to how many packets are to be included in the packet report as seen from column 10, line 58 through column 11, line 8. Nothing is taught in Patel with regard to changing segment size for explicitly marking a packet as being sent back-to-back.

The combination with Zhang provides no further teachings with regard to utilizing the MSS for explicitly marking packets as being sent back-to-back as recited in amended Claim 26; because this element is not taught, the combination cannot render amended Claim 26 obvious.

Therefore, Applicant respectfully requests that the rejection of Claim 26, and the claims that depend therefrom, be withdrawn.

(b). Claims 7, 10-12, 15, 17, 22-24, and 36-39. This group of claims depends from independent claims whose patentability has been shown and should be considered *a fortiori* allowable. Therefore, Applicant respectfully requests that the rejection of Claims 7, 10-12, 15, 17, 22-24, and 36-39 be withdrawn.

3. Rejection of Claim 25 under 35 U.S.C. § 103(a).

Claim 25 was rejected under 35 U.S.C. § 103(a) as unpatentable over Patel et al. (U.S. Patent No. 6,731,600) in view of Official Notice.

Claim 25. It is asserted that Patel "*did not explicitly state wherein said marking of packets is performed for every packet sent or performed in response to congestion.*"

Claim 25 depends from an independent claim whose patentability has been

shown; accordingly, Claim 25 should be considered *a fortiori* allowable. Therefore, Applicant respectfully requests that the rejection of Claim 25 be withdrawn.

4. Amendment of Claims 1, 14, and 26-27.

Claims 1, 14, and 26-27. Independent Claims 1, 14, and 26-27 were amended to include material from dependent Claim 9.

Claims 8-9, 18, and 32. Claims 8-9, 18, and 32 have been canceled.

5. Amendments Made Without Prejudice or Estoppel.

Notwithstanding the amendments made and accompanying traversing remarks provided above, Applicant has made these amendments in order to expedite allowance of the currently pending subject matter. However, Applicant does not acquiesce in the original ground for rejection with respect to the original form of these claims. These amendments have been made without any prejudice, waiver, or estoppel, and without forfeiture or dedication to the public, with respect to the original subject matter of the claims as originally filed or in their form immediately preceding these amendments. Applicant reserves the right to pursue the original scope of these claims in the future, such as through continuation practice, for example.

6. Extension of time under 37 CFR 1.136(a).

A petition is enclosed for a one month extension as described in 37 CFR 1.136(a); an appropriate fee is enclosed.

7. Conclusion.

Based on the foregoing, Applicant respectfully requests that the various grounds for rejection in the Office Action be reconsidered and withdrawn with respect to the presently amended form of the claims, and that a Notice of Allowance be issued for the present application to pass to issuance.

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Amdt. Dated: 03/17/2009
Off. Act. Dated: 11/17/2008

In the event any further matters remain at issue with respect to the present application, Applicant respectfully requests that the Examiner please contact the undersigned below at the telephone number indicated in order to discuss such matter prior to the next action on the merits of this application.

Date: March 17, 2009

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J. P. O'Banion', written in a cursive style.

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